Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-6257

TROY LEON GREGG,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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STATEMENT OF THE CASE

On February 7, 1974, Petitioner was convicted of the murders and armed robberies of Fred Simmons and Bob Moore in Gwinnett County, Georgia, on November 21, 1973. The Supreme Court of Georgia affirmed the convictions and the two death sentences for murder but remanded for resentencing on the armed robberies. Gregg v. State, 233 Ga. 117, S.E. 2d (1974).[1]

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[1]The Court held that once one capital felony had been used as a statutory aggravating circumstance to justify a death sentence for

Petitioner's jurors did not have to deal with a difficult question of disputed identity. They knew who killed Fred Simmons and Bob Moore because Appellant told them he did. The crucial, factual issue was the question of intent: Why did Petitioner gun down the two men who had given him and his sidekick a ride all the way from Florida to Atlanta?

Appellant swore it was in self-defense. Everything else pointed to murder in cold blood for a second-hand Pontiac with re-tread tires and perhaps $500.00:

The bodies of Fred Simmons and Bob Moore were found Thanksgiving morning in a drainage ditch at the intersection of I-85 and Georgia Highway 20 (the Lawrenceville Highway), just northeast of Atlanta. Simmons was dead of a bullet wound in the temple. Moore had been shot in the back of the head. Dr. Byron Dawson, when he performed the autopsy, specifically looked for signs that either man had been fighting. The evidence tended to discount that possibility, being more consistent with the bodies' having been dragged and dropped into the culvert shortly after their deaths.

Headlines about the apparently brutal murders caught the attention of a horrified visitor to Atlanta, Dennis Weaver. The victims were the same, amiable men who had given him a ride from north Florida the day before Thanksgiving. Weaver went to the police and described the

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another committed with it, the latter offense could not be used to aggravate the former. 233 Ga. at . It also held that death sentences are disproportionate in armed robbery cases. 233 Ga. at . Neither holding is insignificant. A defect peculiar to the murder convictions would eliminate Petitioner's capital sentence -- even without the disproportionality holding. The Court has been asked to reconsider the rejection of reciprocal aggravation in Jarrell v. State, No. 29473 (Ga. S.Ct., docketed Nov. 4, 1974). The Court reaffirmed the conclusion that the death sentence is disproportionate in armed robbery in Floyd v. State, 233 Ga. 280, S.E. 2d (1974).

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car he rode in and its passengers. They were the victims, ["Fred" (Edward Simmons) and "Tex" (Bob Moore)], and two other hitchhikers, ["Troy" (Petitioner, Troy Leon Gregg), and "Sam" (Petitioner's sidekick, Floyd Raiford Allen, III)]. Weaver said he had heard the men say they were going to Asheville, North Carolina.

With the lead given by Weaver, and with help from other clues that a particular maroon and white Pontiac was involved, police were able to broadcast a wanted description for the car and suspects. (Victim Moore had a credit card receipt in his pocket which had his tag number on it and which Florida was able to trace). The lookout (accurately so) was for a maroon bottom, white top Pontiac, having a black spot on the trunk lid, a dent in the rear fender, white wall tires, dual hub caps, and Florida tag 7W 85 381, and occupied by two white males: one about 6'1" or 6'2", slender, long greasy hair, about 135-140 pounds, and the other sixteen to seventeen years old, short hair, nickname Sam, and possibly having a hurt lip. That message led to the arrest of Petitioner and his cohort, Sam, in Asheville, North Carolina, two days after the murder. Petitioner was driving Simmons' car, had a wad of money, the bill of sale for the car, new boots, and a pistol of his own, which was later proved ballistically to have fired the fatal bullet. Simmons was later identified by Weaver in Asheville.

Since then Petitioner has given several versions of the killings. He and Weaver did give similar accounts of the drive up from Florida. They said that Fred and Tex were hired hands en route to Texas, or perhaps Asheville, North Carolina, after working in Florida. They had picked up Troy and Sam near St. Cloud, Florida.

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At that time they were driving Simmons' 1969 Ford, but it threw a rod. When a highway patrolman came by, Simmons told him "he (Simmons) would like to buy another car." The patrolman gave Simmons and Moore a lift to a used car lot while Troy and Sam stayed with the Ford. In his testimony, the highway patrolman indicated that Simmons and Moore had

> "a considerable amount of money, cash, tens and twenties and bills of various denominations. They had it out of their wallet rolled up and the tall man (Moore) had most of the money in several pockets and he kept pulling money out of all different pockets."

Simmons purchased another car, and the group drove on to the intersection of I-75 and I-10, where they picked up Weaver. The trip to Atlanta was friendly enough and uneventful, although Weaver later remembered moments of premonition -- for example, a time at a rest stop when Sam and Appellant were outside the car, mysteriously talking and looking his way.

Weaver got out in Atlanta at I-85 and Druid Hills Road, and his account necessarily ends there, on an oddly prophetic warning from "Tex" about the dangers of the highway. But Petitioner's own versions and talk of the events that night continue.

The most recent of these versions is in the testimony Petitioner gave to the jury. In his own words:

> "We were driving, I drove about 30 or 35 minutes and it had been raining a little bit and the road was a little slick and I

was driving slower than I had been, and - ah - Fred and Bob said that they wanted to go to the restroom. So, that's when I stopped on - ah - Georgia 20 and 85.... At that time Fred and Bob were both in the front seat with me and they got out and I got out and Sam was about half asleep in the back seat and he roused up and he got out and we were all standing on the right hand side of the car, and - ah - Fred and Bob were standing at the front and Sam and I were standing about half way the car and Fred and Bob were talking, I don't know what they were saying, I couldn't understand them, there was traffic on Interstate and it was heavy at that time of the night and there was a quite a bit of noise and I couldn't understand what they were saying.... Ah, Fred hit me on the left jaw and knocked me in the drainage ditch and I got back up and asked him to leave me alone and he hit me the second time and knocked me back into the drainage ditch and when I came out of the drainage ditch the second time he came at me. I don't know what he had in his hand, it could have been a knife or pipe, I don't know what it was, but when he came at me the second time I shot him. (He had an object in his hand). It was either a knife or a pipe, about-six or eight inches long, I couldn't see that

clear. . . . Bob was beating up on Sam and I shot him, and - ah - it scared me then so I propped up against the car, cause I couldn't hardly stand up, and I was just standing there kinda nervous and Sam run around in the drainage ditch. . . . He came up out of the drainage ditch, he picked up something out of the drainage ditch and said let's go, he got in the car and sat down and I was scared so I drove the car and left."

Petitioner went on to say that he "was just protecting myself" and that he did not intend to kill his victims.

Petitioner never testified that he was in a quarrel with Simmons or Moore, and in fact he said "I never did learn how to fight, I have always been afraid to fight."

In regard to Petitioner's testimony that Sam was in a struggle with Moore, there was testimony by Ashville police that Sam had a sore lip when apprehended, but he had a sore lip when Weaver saw him, too, before the killing, and told Weaver about a fight he had had in Florida.

On cross-examination, Petitioner was unable to explain his victim's wound in the back of the head in terms of his story of self-defense and defense of Sam. Nor could he explain why a "knife or pipe" was not found at the scene. Petitioner attempted to explain his possession of more than $100.00, at the time of his arrest, when he had originally had only about $10.00, by saying that he accidentally

ran into a taxi cab driver in Asheville, who owed him the money. Petitioner admitted that he had never informed his attorney or his people in Asheville about this circumstance. He attempted to explain all his new paraphernalia by saying that Sam had purchased it.

Finally, Petitioner did not effectively answer how he was knocked twice into a ditch by a man who had been drinking beer all day, according to Weaver and Petitioner's own accounts; who already had preferred to have Petitioner drive instead of himself; who was having trouble keeping his balance; and who was "heavily intoxicated" according to the results of the pathologist's analysis of Moore and Simmons' blood.

While he was awaiting his trial, Petitioner was so concerned that his jury receive an authoritative version of the events that night, that Petitioner prepared a script for Sam to follow in testifying about them. Unfortunately, Sam did not testify, and Appellant's credibility was further impeached when the jury learned about Petitioner's efforts at pre-trial coaching.

Except for his trial testimony, and his prepared script, all the other statements made by Petitioner concerning the crime and introduced at trial were made within about fifteen hours following Petitioner's arrest. Two of these statements were made in Asheville. The third was made at the murder scene, on the trip back to Lawrenceville. Petitioner has made the circumstances surrounding all three statements the subject of his second and third arguments. His statements were all the subject of hearings outside the presence of the jury, and the trial judge found they were voluntary after considering the circumstances and statements as they are described next in this brief.

Petitioner and Sam were arrested about 3:00 p.m. in Asheville, North Carolina, the day after the murder, because they were driving Fred Simmons' Pontiac with its license tag, as described by Weaver, and in the police bulleting, and because they matched the description of suspects said to be wanted in the double murder. Within five minutes of his arrest about 3:00 p.m., Petitioner was given a Miranda warning.

Petitioner also read and signed a standard rights waiver about 3:15 p.m.

Asheville police notified Gwinnett County about the arrest about 4:00 p.m. and Gwinnett officers then obtained murder warrants against Petitioner and drove to Asheville. They first saw him at a magistrate's office, where Petitioner waived extradition about 9:30 or 10:00 that night.

Petitioner had not been questioned at all at that time. After the group came back to the station from the magistrate's office, Gwinnett County Detective B. H. Blannot, asked Petitioner if he would like to talk with Blannot and Gwinnett Police Chief Crunkleton. Petitioner agreed and for about thirty minutes spoke with them, while Detective Blannot wrote down Petitioner's version of the shootings at that time. Before he made the statement, Petitioner was warned again specifically that he was the subject of a Gwinnett County murder warrant.

To a certain extent, this statement, acknowledged and signed by Petitioner, is similar to his trial testimony. However, that night he did not try to put all the blame for taking the money on Sam, but said, "we took about four or five hundred dollars." Also that night, he initially tried to deny knowing Fred Simmons.

After talking with Detective Blannot and Chief Crunkleton, Petitioner went with the other two men out into the lobby or detectives' work room to wait until the interview with Sam was over. While they were waiting, Petitioner asked Asheville Detective William Gibson for a cigarette and during their apparently private conversation, Gibson asked Petitioner "why he shot those people."

Petitioner's response was introduced at trial in rebuttal to his trial testimony that he had not meant to kill Moore and Simmons. To the contrary, what Appellant told Gibson was, "by God, I wanted them dead."

The return trip to Lawrenceville began about 12:30 or 1:00 a.m. It lasted about four hours. Petitioner and Sam were in separate cars. During the trip back, Petitioner was loosely handcuffed except for stops for doughnuts and coffee. He dozed and rested the entire way back, and the group conducted only a general conversation without discussing the crime.

The group returned from Asheville on I-85, and about 5:00 a.m., it arrived at the Lawrenceville Highway exit. Blannot said officers purposely stopped there to reconstruct events, but it was six of one and half a dozen of the other as to whether this exit or an alternate exit was the more direct route home. He personally had always used the Lawrenceville exit anyway. When all got out, Sam, in front of Petitioner, told the group what happened:

> "Sam told us that he had been sitting in the back seat of the 1960 Pontiac and was about half asleep that he woke up when the car stopped. The two victims got out, Fred and Tex, got out, and Sam told us as soon as they got out, Troy turned around and told

him, he said, get out, we're going to rob them. Sam told us that he got out and walked toward the back of the car and looked around and could see Troy at the car, with a gun in his hand, laying up on the car, so he could get a good aim, the two men had gone down the bank and had relieved themselves and as they were coming up the bank, according to Sam, Troy fired three shots, one of the men fell, the other staggered, Troy then circled back around the back, or rear of the car and approached the two men, both of which were now laying in the ditch. He placed the gun to ones head and pulled the trigger then went quickly to the other one and placed the gun to his head and pulled the trigger again, he then took the money, whatever contents were in their pockets, he told Sam, to get in the car and they drove away."

Petitioner did not deny the accuracy of Blannot's report of Sam's words. He did tell his jury that when he heard Sam say this, he dropped his "head and said Sam was doing the talking."

Detective Blannot, who was obviously believed, did not remember Petitioner's response quite that way. In his account, when Sam finished, police "Chief Crunkleton asked Troy, if that was how it happened, and Troy replied after hanging his head and looking at the ground, yes it was. . . :"

"Chief Crunkleton then asked him these words, I quote, you mean you shot these men down in cold-blooded murder just to rob them. . . and Troy replied, yes, and Chief asked him why, and he said didn't know."

REASONS FOR NOT GRANTING THE WRIT

I. PETITIONER'S FOURTH AMENDMENT CLAIM IS GOVERNED BY WELL SETTLED PRINCIPLES. (Question 1).

When Petitioner was arrested, he was searched, and police found the murder weapon and $107 in cash upon him. They searched the car in which he was captured as soon as they arrived at the police station following the arrest and found some old and new clothing, the victim Moore's bill of sale for the car and the business card of the Florida car lot where the victims bought the car. Police also searched the motel room, which Petitioner told police he had used the night before, and found a "stereo tape outfit and...a new stereo player."

An arresting officer from North Carolina testified about each of these discoveries. Physical evidence admitted at trial included the weapon, the bill of sale, and the business card described above. Following Detective McMahon's testimony, Petitioner moved to strike each of the physical exhibits and the testimony. Petitioner's theory then, before the Supreme Court of Georgia, and now has been that each of these items

of evidence are tainted fruit of Petitioner's warrantless arrest in an absence of probable cause. He has embraced this same theory in seeking exclusion of each of his custodial statements to the police.

The Fourth Amendment claim thus made is inappropriate for consideration by writ of certiorari because its disposition by the Supreme Court of Georgia was correct under well settled principles of constitutional law.

The case began with discovery of the bullet-ridden bodies of two men beside an interstate highway near Atlanta, on the route to Asheville, North Carolina. A hitchhiker gave police a description of the car driven by the victims and of two other hitchhikers, who remained with the victims when he himself got out not far from the scene and not long before the deaths occurred. The hitchhiker told police the other four men were discussing plans to go to Asheville. One victim's pocket contained a gas station receipt with a license tag number written upon it. The receipt corroborated the hitchhiker's account of driving from Florida, and the tag number, when forwarded to Florida police, led to a car description, which also corroborated the hitchhiker.

On these facts, a reasonably prudent man would have believed a crime probably had been committed by persons he found matching the hitchhiker's descriptions and driving a car like the one described. Such a belief is probable cause for arrest. See Harris v. United States, 403 U.S. 573, 584 (1971). So long as it has this validity at its source, the lookout bulletin broadcast by Georgia police so that others might act upon it was constitutionally permissible. See Whiteley v. Warden, 401 U.S. 560 (1971). So was the warrantless arrest made by

Asheville police when they found suspects of the right description in a car also of the right description. See Draper v. Illinois, 358 U.S. 307 (1959).

Pursuant to a lawful arrest, police may search a suspect without a warrant for weapons and evidence of the crime. United States v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973). Under the exigent circumstances of the automobile arrest in this case, police with probable cause were authorized to conduct a warrantless search of the vehicle. See Chambers v. Maroney, 399 U.S. 42 (1970). To have even the standing to contest that conclusion, Petitioner would need to omit from the record the proof that the car was stolen from his victims. See Alderman v. United States, 394 U.S. 165 (1969). Thus, the physical evidence and the testimony about its discovery on Petitioner and in the car ought not to be the subject of a review by a discretionary writ of certiorari for they are the legitimate fruits of a lawful arrest, under well settled principles. To the extent that the attack on custodial statements depends upon the same theory of constitutional invalidity in the arrest and subsequent custody, it too should be rejected for the same reason: The arrest and custody were valid.

In regard to the testimony that officers had found the stereo equipment when they searched the motel room, nearly the same argument applies. The contention consistently has been made on the theory that probable cause for the warrantless arrest was absent. The argument clearly is without merit. To the extent that this search was not pursuant to the arrest, however, and was not part of the automobile search, either, nevertheless the Court might assume arguendo there

was a Fourth Amendment defect and still deny certiorari with propriety. Beyond reasonable doubt, see Chapman v. California, 386 U.S. 18 (1967), a jury with the circumstantial evidence in this case, the statements by Petitioner, and in particular his admission that his cohort was telling the truth at the scene, would have reached the same result had it had all the evidence before it again except for the simple statement by an officer that in searching the motel police found "some clothing and a stereo tape outfit and we found a new stereo player that was made for a car."

The writ should be denied insofar as it seeks to present a Fourth Amendment argument for excluding the statements, the murder weapon, and other evidence described above.

II. PETITIONER'S MIRANDA AND DUE PROCESS CONTENTIONS CONCERNING HIS CUSTODIAL STATEMENTS ALSO FAIL TO DEMONSTPATE SUBSTANTIAL MERIT. (Questions 2, 3).

As soon as he was arrested about 3:00 p.m. in Asheville, Petitioner was given a warning pursuant to Miranda v. Arizona, 387 U.S. 436 (1966) and was told that he was under suspicion in Georgia, possibly for murder. He signed a standard rights waiver a few minutes later. About 4:00 p.m. Gwinnett County police were notified and they obtained murder warrants for Petitioner and his companions and drove to Asheville. They first saw Petitioner about 9:30 or 10:00 that night at a magistrate's office where Petitioner waived extradition.

At the police station afterwards, Petitioner voluntarily gave a thirty minute written statement to the Gwinnett County Police Chief and the detective assigned to the case. This statement was exculpatory to the extent that it was predicated on self-defense. Miranda was not specifically reiterated, but Petitioner was told once again he was the subject of a murder warrant, and Detective Blannot asked Petitioner whether he had been advised of his rights (Blannot having been told by North Carolina police that they had advised Petitioner).

Also at the police station, Petitioner, in conversation with the North Carolina officer, whom he asked for a cigarette, after talking with Gwinnett County officers, told him he shot Moore and Simmons because "by God I wanted them dead." This statement was in response to Gibson's question about the reason for the shooting.

Petitioner's young cohort gave a statement to Georgia authorities in Asheville. It implicated Petitioner in cold blooded murder. Petitioner and the cohort began the return trip back to Georgia in separate cars about 12:30 a.m. or 1:00 a.m. The trip back lasted about four hours, and Petitioner was loosely handcuffed, except for stopping for doughnuts and coffee. The case was not discussed until the two cars arrived at the scene of the slaying, which was en route to Lawrenceville, the Gwinnett County seat.

There Sam, the cohort, described what had occurred. At his trial, Petitioner said he only said then that Sam was doing the talking. The jury believed the detective, who said Petitioner acknowledged the truth of Sam's version.

In testifying before the jury, Petitioner himself reiterated in substantial part what he had said in North Carolina. Petitioner disputed the State's version of what occurred at the scene on the

way back, but significantly Petitioner did not testify that he was in fear, coerced, or unaware of his rights, in connection with any of the statements.

In this setting, Petitioner makes two arguments. In Part II, he contends that each of the three statements should have been excluded because they were not immediately preceded by the warning required in Miranda. In Part III, he seeks to have excluded the admission he made at the scene that Sam was telling the truth on the grounds that, considering the circumstances as a whole, the statement was involuntary.

The statement made to Gibson ("by God, I wanted them dead") was introduced in rebuttal for the purpose of impeaching Petitioner's testimony that he did not mean to kill the victims, only to fend them off. Regardless of the disposition of the narrow Miranda question, this statement was admissible. Harris v. New York, 401 U.S. 222 (1971).

In regard to the narrow Miranda question, when a record is sufficient to demonstrate an adequate Miranda warning, and its understanding, several hours prior to custodial statements, this mere lapse in time without a reiteration of the former warning is not itself sufficient to invoke the exclusionary rule. See United States v. Manar, 454 F.2d 342 (7th Cir. 1971); United States v. Osterberg, 423 F.2d 704 (9th Cir. 1969) cert. denied 399 U.S. 914 (1970); Miller v. United States, 396 F.2d 492 (8th Cir. 1968), cert. denied 393 U.S. 1031 (1969).

Even in the presence of Miranda warnings, however, custodial statements must have been voluntary. The trial judge in this case

conducted a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964) and he and the jury were satisfied that each of Petitioner's statements were voluntary. The determination of that question is essentially factual, see Lego v. Twomey, 404 U.S. 477 (1972), determined upon the record as a whole. See Frazier v. Cupp, 394 U.S. 731 (1969) (statements triggered by police ruse that accomplice had implicated suspect).

III. THE COURT SHOULD NOT GRANT THE WRIT TO CONSIDER WHETHER THE DEATH SENTENCE IS CRUEL AND UNUSUAL. (Question 4).

Petitioner incorporates by reference the reasons for granting Eighth Amendment review presented in Eberheart v. Georgia, No. 74-5174 (filed August 19, 1974). Respondent also continues to rely upon his brief in opposition in that case and further supplements his opposition to the grant of certiorari in this instance as follows:

Petitioner and Respondent share a common starting ground in taking note of the fact that a number of persons have been found by their contemporaries in this country to merit death as lawful punishment. For Petitioner, this is part of his argument that the Court should reconsider the question before it in Furman v. Georgia, 408 U.S. 238 (1972). However, the very reason proffered for granting review is an in-road into the merits of the claim itself that contemporary community standards render capital punishment cruel and unusual.

In Furman, supra, the Court declined to hold that the death sentence is per se unconstitutional. In light of the reaffirmation of the death penalty by a majority of American jurisdictions, Note, 87 Harv. L. Rev. 1690, 1691 (1974), the Court should decline to reconsider the question.

As an alternative argument, Petitioner would have the Court consider whether the capital procedures implemented in Georgia since Furman result in cruel and unusual punishment because of the arbitrary, rare and discriminatory use which they would make of the death penalty. Petitioner has not demonstrated substantial grounds for having the court consider this question, either.

Respondent respectfully suggests that the holding in Furman may be stated as the following, result-oriented proposition: Isolated defendants cannot be sentenced to die on the basis of chance or arbitrariness or impermissible social attitudes. The statute must be applied in such a way that there is a meaningful pattern of death sentence imposition.

As written and construed, Georgia procedures satisfy this criterion. In a separate hearing after determination of guilt, a Georgia jury cannot impose a death sentence unless it finds beyond reasonable doubt the presence of at least one of ten "statutory aggravating circumstances." Ga. Laws 1973, p. 159, as amended without material change, Ga. Laws 1974, p. 352 [Ga. Code Ann. § 26-3102, 27-2503 (formerly 27-2534.1), -2534, -2537 (Supp. 1974)].

If death is imposed, there is a second level set of guidelines by which Supreme Court of Georgia reviews the sentence. Ga. Code Ann. § 27-2537, supra. These standards have been paraphrased by

the Supreme Court of Georgia as follows:

> "Whether the sentences of death were imposed under the influence of passion, prejudice or any other arbitrary factor; whether the evidence supports the jury's finding of a statutory aggravating circumstance; and whether the sentences of death are excessive or disproportionate to the penalty imposed in similar cases considering both the crime and the defendant...."
> Floyd v. State, 233 Ga. 280, 284, __S.E.2d__ (1974).

Largely then, through its review for disproportionate sentences, the Supreme Court of Georgia has seen to the implementation of the Georgia statute in the required, neutral and meaningful pattern. The Court has construed its

> "duty under the similarity standard to assure that no death sentence is affirmed unless in similar cases throughout the State the death penalty has been imposed generally and not 'wantonly and freakishly imposed'...." Moore v. State, No. 29278 (Ga. S.Ct., Feb. 12, 1975).

Under the disproportionality standard, for all practical purposes, a death sentence for armed robbery will not stand. Petitioner's case is the leading example, Gregg v. State, 233 Ga. 117, __S.E.2d__ (1974). Rape and probably kidnapping will require

particularly pathetic circumstances. Compare Coley v. State, 231 Ga. 829, 204 S.E. 2d 612 (1973) with Eberheart v. State, 232 Ga. 227, 206 S.E. 2d 12 (1974). The classic death sentence will be one for senseless murder, again, as illustrated by Petitioner's case. See also House v. State, 232 Ga. 140, 205 S.E. 2d 217 (1974). In each instance, a person convicted of death will be a member of a group rationally determined, not one whose members are the result of freakish circumstance. The membership will be in a group determined by the Supreme Court of Georgia to be one whose members will be generally found by Petitioner's contemporaries to be deserving of death.

IV. PETITIONER DID NOT MAKE A SEASONABLE PRESENTATION OF HIS CONTENTION THAT THE GEORGIA PROCEDURE FOR DETERMINING DEATH SENTENCE PROPORTIONALITY DENIES HIM DUE PROCESS, EQUAL PROTECTION UNDER THE LAW, AND THE EFFECTIVE ASSISTANCE OF COUNSEL. (Question 5).

Petitioner also incorporated the Eberheart argument that the Georgia death statute procedures for appellate review deprive an indigent of due process, equal protection, and the effective assistance of counsel. Because Petitioner argued before the Supreme Court of Georgia only that the death sentence is cruel and unusual, this presentation has not been preserved for review. Tacon v. Arizona, 410 U.S. 351 (1973).

CONCLUSION

The Court should refuse to grant the writ of certiorari because Petitioner Gregg has not set forth sufficient reasons for review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard L. Chambers, one of the Attorneys for the Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2 day of May, 1975, I served the foregoing Brief for the Respondent in Opposition on counsel for Petitioner by mailing two copies of the same in a duly addressed envelope with postage prepaid to:

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